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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,188	04/06/2004	Jean-Marc Francois	2002B098/2	2316

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EXAMINER

KRUE, KEVIN R

ART UNIT	PAPER NUMBER
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1773

DATE MAILED: 09/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/822,188

Applicant(s)

FRANCOIS, JEAN-MARC

Examiner

Kevin R. Kruer

Art Unit

1773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 July 2005.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-60 is/are pending in the application.  
4a) Of the above claim(s) 27-47 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-26 and 48-60 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on April 6, 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Drawings***

1. The drawings filed April 6, 2004 are accepted.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 13 recites the limitation "unsaturated ester" in the first line of the claim. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-14, 16-26 and 48-60 are rejected under 35 U.S.C. 102(b) as being anticipated by US 6,013,353 (Touhsaent).

Touhsaent teaches a metallized multi-layer film comprising a substrate having a polymer core, on at least one surface of which is a polymer skin layer having a lower melting point than that of the core layer (abstract). The core may comprise a polyolefin such as HDPE or polypropylene (col 2, lines 29+) and is herein understood to read on the claimed first polymer layer. Said polymer should have a melting point of 125-190C

(col 2, lines 29+). The skin may comprise a polyolefin (col 3, lines 10+) and the skin layer between the core layer and the metallized layer is herein understood to read on the second polymer layer. The skin layers may be co-extruded with the core layer (col 3, lines 40+). The exposed surface of the skin layer may be treated by flame or corona discharge treatment prior to coating to increase its adherence to other materials (abstract). A metal is deposited on the film substrate. Said metal may be aluminum (abstract). A polymeric low temperature sealable coating comprising an ethylene/ethylenically unsaturated carboxylic acid copolymer is deposited on the metal layer (abstract). Said ethylenically unsaturated acid may be acrylic acid, acrylate, methacrylate, or methacrylic acid (col 4, lines 31+). Said low temperature sealable coating is herein understood to read on the claimed transfer layer, and the heat sealable layer of claim 3. The laminate may further comprise a primer comprising titanates, or polyethylene imine to the surface of the core layer opposite the metal layer (col 5, lines 53+). Said laminate may be used to label or package an article (abstract).

The polymer skin layer on the side of the core layer opposite the metal layer may have another coating deposited on the surface thereof (abstract). Said layer may comprise a sealable coat (col 6, lines 5+), a barrier coat such as PVDC (col 6, lines 34+), or a print layer (col 7, lines 1+). Said sealable layer may comprise the same polymer as the low temperature sealable coating described above.

With regard to claims 2, 10 and 49, Touhsaent does not teach the "transfer layer" was formed on the second side of the first layer with the de-bonded surface of the

transfer layer removably bonded on the second side of the first layer, and the transfer layer was thereafter transferred to and fixedly engaged on the first side of the metal layer following winding the film on a roll after the metal layer is applied on the second layer. However, the courts have held that the method of making the product does not patentably distinguish a claimed product from a product taught in the prior art unless it can be shown that the method of making the product inherently results in a materially different product. In the present application, no such showing has been made.

With regard to claim 9, the skin layer remote from the metal layer is understood to read on the first layer and the core layer and other skin layer are understood to read on the claimed "multiple layer" second polymeric layer.

With regard to claim 19, the skin layer opposite the metal layer is understood to read on the claimed "at least one additional polymeric layer" and is understood to be heat sealable since it is taught to have melting point at least 5-50C lower than the core layer composition (col 3, lines 10+).

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,013,353 (Touhsaent), as applied to claims 1-14, 16-26, and 48-60, and further in view of Akao et al (US 5,492,741).

Touhsaent is relied upon as above. Specifically, Touhsaent teaches the metal layer provides the laminate with barrier properties (col 1, lines 1+) but does not teach the claimed thickness of the metal layer. However, Akao teaches the barrier properties of an metallized layer are a result effective variable that depends upon the thickness of the metal layer (col 6, lines 41+). Suitable thicknesses include 55-1200A. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to vary the thickness of the metal layer taught in Touhsaent. The motivation for doing so would have been to optimize the film's barrier properties.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin R. Kruer whose telephone number is 571-272-1510. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on 571-272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'K R K', is positioned above the printed name.

Kevin R. Kruer  
Patent Examiner-Art Unit 1773